K

1948

K

File No. Special Tribunal II/48

Legal **DEPARTMENT**

B **BRANCH**

Subject:—

Rules and Notifications under the Bombay Special Tribunal (continuance) Act; 1946

P.S
(E)

File No. Special Tribunal II/48

Std. Sectt. Slip 24 B e.

361-B

No.21 of 1948. 1

Advocate General's Chambers,
High Court,
Bombay, 13th April 1948.

U.O.R. to the Advocate General of Bombay,

No. dated the

****

O p i n i o n.

The situation is indeed a curious one. The Tribunal in question is set up both by the Central Government and also by the Bombay Provincial Government. It has jurisdiction to try certain matters by reason of its constitution and continuance under Bombay Act XXXI of 1946, whereas it can try other matters by reason of authority derived from the original ordinance.

The appointment of the personnel is an executive matter. The executive authority the centre extends to the matters in respect which the Central Legislature has power to make laws (sec.8 of the Constitution Act), and similarly the executive authority or power of the province is limited to matters with respect to which the provincial legislature can make laws. It appears therefore, that each of the two Governments should make appointments to the Tribunal in order that it may continue the trial of those matters over which jurisdiction is derived by reason of the original orders of each of them.

A joint appointment or joint action is not, so far as I can see, known to the Constitution Act, but there is nothing to prevent the appointment of the same individuals being separately made by distinct orders of the respective Governments The manner of carrying out the two orders so as be consistent is, I think, covered by sec. 126 of the Constitution Act, which provides that "the executive authority in the province shall be so exercised as not to prejudice the exercise the executive authority of the federation, and the executive authority of the federation shall extend to the giving of such directions to a province as may appear to the federal government to be necessary for that purpose."

6.5.48

Accordingly I suggest that the Central Government should make the appointments and issue directions to the provinces to appoint the same persons by its order as have been appointed by the Central Government.

Sd/-

Advocate General.

SNT/30.5.

Office of the R.L.A.

As important points were involved in the case the Advocate General, Bombay, was consulted. The Statement of the Case was also prepared for his use. A copy of the Advocate General's opinion No.21, dated the 19th April 1948 is sent herewith. The statement of the case is however misplaced and is being traced.

P.M.LAD.
16/4.

Remembrancer of Legal Affairs.

U.R. to H.D.,No. 166-Confl, dated the 19th April 1948.

Subtd. for approval and signature.

J.I.Bora.
16/4.

P.A. K.J.Pathare.
16/4.

S.A.S. S.L.Chaudhari.
16/4.

R.L.A.

SMT/30/5.

Office of the R.L.A.

A revised draft notification is sent herewith. It would be desirable to state the names of the persons in whose place the present appointments are to be made. N.D. should verify that the names are correctly mentioned in the draft notification.

P.M.LAD.
15/5.

Remembrancer of Legal Affairs.

U.R. to N.D.No. 4679, dated the 15th May 1948.

Submitted. for signature.

Sd/-
14/5

P.A. Sd/-
14/5

S.A.S.

R.L.A.

SMK/20/5.

Notifications.

Home Department,

Bombay Castle, May 1948

Bombay Special Tribunal (Continuance) Act, 1946.

No. — In pursuance of section 3 of the Bombay Special Tribunal (Continuance) Act, 1946 (Bom. XXI of 1946), and in modification of previous notifications issued in this behalf, the Government of Bombay is pleased to appoint Mr. Ratilal Bhikchand Mehta, Advocate, Bombay, and Mr. Shankar Bhaskar Jakhar, Assistant Government Pleader, Bombay, to be members of the Second Special Tribunal, Lahore, which in virtue of Article 3 of the Indian Independence (Special Tribunals) Order, 1947, is known as the Bombay Special Tribunal, vice Mr. Mirza Abdur Rab and Lt. Col. N.B.C. Morell.

By order of the Governor of Bombay

Secretary to Government.

SEF/30.5